Pro Works Contracting, Inc. *and* Iron Workers Local 229, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL–CIO. Cases 21–CA–161599 and 21–CA–162578

December 13, 2017

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge and an amended charge in Case 21–CA–161599 filed by Iron Workers Local 229, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL–CIO (the Union), on October 8 and November 17, 2015, respectively, and a charge and an amended charge in Case 21–CA–162578 filed by the Union on October 22 and November 17, 2015, respectively, the General Counsel issued the consolidated complaint on May 4, 2016, against Pro Works Contracting, Inc. (the Respondent), alleging that the Respondent violated Section 8(a)(3) and (1) of the Act.

Subsequently, the Respondent entered into a unilateral informal settlement agreement, which was approved by the Regional Director on June 21, 2016.[1] The settlement agreement required the Respondent to post at its facilities a Board Notice to Employees, in English and Spanish, for 60 days and to mail the notice to all current employees and former employees employed at any time since September 1, 2015. The settlement agreement further required that the Respondent's president and owner, Earl Register, would read the Board notice to all current employees during regular work time. The settlement agreement also contained the following provision:

> Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.
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> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the Consolidated Complaint (Complaint) previously issued on May 4, 2016, in the instant cases. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

On August 8, 2016, the Region sent a compliance package to the Respondent containing copies of the conformed settlement agreement, the Notice to Employees, and a letter describing the Respondent's obligations under the settlement agreement. The Region also emailed, on August 8 and 9, respectively, copies of the compliance package to Gary Lane, the Respondent's office manager, and to Register. The Region received no response from the Respondent.

In January and February 2017, the Region again solicited the Respondent, through multiple emails to Lane, to comply with its obligations under the settlement agreement and provided instructions and deadlines for the Respondent in this regard. On April 6, 2017, the Regional Director sent the Respondent, by emails to Register and Lane and by UPS shipment, a default warning letter, along with another copy of the compliance package. The Respondent refused delivery of the UPS shipment. On June 15, 2017, the Regional Director sent the Respond-

[1] The Union did not enter into the settlement agreement, and appealed the Regional Director's approval of it. On July 21, 2016, the Office of Appeals sustained the Regional Director's approval.

ent, by emails to Register and Lane and by certified mail, a revised default warning letter and another copy of the compliance package. The Respondent refused delivery of the certified mail. The June 15 letter advised the Respondent that if its noncompliance was not cured by June 29, 2017, the Region would invoke the default provision in the settlement agreement, reissue the consolidated complaint, and file a motion for default judgment with the Board. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, on July 31, 2017, the Regional Director reissued the consolidated complaint. On August 1, 2017, the General Counsel filed a Motion for Default Judgment with the Board. On August 4, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to post, mail, and read the Notice to Employees in the manner prescribed in the settlement agreement. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued consolidated complaint are true.[2] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Santee, California, and has been engaged in the business of general contracting and steel reinforcement subcontracting in the building and construction industry.

In conducting its operations, during the 12-month period ending October 21, 2015, the Respondent performed services valued in excess of $50,000 to Lusardi Construction Company (Lusardi), an enterprise engaged in the business of general contracting in the building and construction industry, with an office and place of business in San Marcos, California. During the 12-month period ending October 21, 2015, Lusardi, in conducting its operations described above, purchased and received at its San Marcos facility goods valued in excess of $50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Earl Register		President
Tom Coker		Superintendent/Representative
Brian Payne	-	Foreman
Patrick Brown		Foreman

The Respondent engaged in the following conduct, giving rise to these proceedings.

1. About July 29, 2015, the Respondent, by Earl Register, during a telephone call, interrogated an employee about the employee's union activities and support.

2. About September 4, 2015, at the Respondent's Kearny Mesa Sun Road project (Sun Road project), the Respondent, by Brian Payne, interrogated an employee about the employee's activities and support.

3. About September 10, 2015, at the Sun Road project, the Respondent, by Payne, coerced an employee by ripping up a union representative's business card and telling an employee not to have union materials at the work place.

4. About September 10, 2015, at the Sun Road project, the Respondent, by Payne, directed an employee to report the union activities of other employees to the Respondent.

5. About September 10, 2015, at the Sun Road project, the Respondent, by Payne, threatened an employee with termination because of the employee's union activities and support.

6. About September 27, 2015, during a telephone conversation, the Respondent, by Payne, threatened to isolate an employee by giving the employee work assignments away from others because of the employee's union activities and support.

7. Since about September 10, 2015, the Respondent, by Register and Payne, has prohibited union activity at the Sun Road project by requiring employees wearing clothing with union insignia to wear vests over such clothing.

8. About September 10, 2015, the Respondent assigned its employee Robert Whitman more onerous work

[2] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

duties (bending z-bars) because Whitman joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

9. From about October 15 to about October 21, 2015, the Respondent assigned its employee Marc Barry more onerous work duties (punking rebar) because Barry joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the conduct described above in paragraphs 1, 2, 3, 4, 5, 6, and 7, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

By the conduct described above in paragraphs 8 and 9, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to take certain affirmative actions designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to comply with the unmet terms of the settlement agreement approved by the Regional Director for Region 21 on June 21, 2016, by posting, mailing, and reading the notices provided by the Board in the manner prescribed in the settlement agreement.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Pro Works Contracting, Inc., Santee, California, its officers, agents, successors, and assigns shall take the following affirmative action necessary to effectuate the policies of the Act.

Post at its Santee facility copies of the attached notice marked "Appendix,"[4] in English and Spanish and signed and dated by Earl Register (Owner), for 60 consecutive days.

Mail, at its own expense, the attached notice, in English and Spanish and signed and dated by Earl Register, to all current employees and all former employees employed at any time since September 1, 2015.

During the 60-day posting period, have Earl Register read the notice, in English, to all current employees convened at the Respondent's facility located at 10612 Prospect Avenue, Suite 105, Santee, California. This reading will occur during the employees' regular work time. The date of the scheduled reading must be approved by the Regional Director for Region 21. The Respondent will notify employees, in writing, at least 5 days before the scheduled reading, as to the location, time, and date of the reading. The written notification will also inform employees that they will be paid their regular hourly rate/salary for the time it takes employees to travel to/from the reading location, as well as for the time they are at the office for the reading. The Respondent will provide Region 21 with a copy of the draft notification letter before sending it to employees. The draft must be approved by the Regional Director for Region 21 before the final version is sent to employees. A Board agent will be present during the reading. After Earl Register

[3] In his motion for default judgment, the General Counsel stated that the Respondent has failed to post, mail, or read the notice to employees under the terms of the settlement agreement. The General Counsel requested that the Board "[i]ssue a Decision and Order against Respondent containing Findings of Fact and Conclusions of Law based on, and in accordance with, the allegations of the Re-issued Consolidated Complaint, and provide a full remedy for each and every unfair labor practice violation." The General Counsel further specifically requested "that the Board-ordered Notice, along with the mechanics of the Notice-mailing and/or Notice-reading obligation, track the terms and Notice of the Settlement Agreement." In the particular circumstances of this case, we construe the General Counsel's motion as a request to enforce the unmet terms of the settlement agreement. See, e.g., *Perkins Management Services*, 365 NLRB No. 90 (2017) (construing General Counsel's motion for default judgment to seek enforcement of unmet settlement terms when he specifically requested an order requiring the respondent to fulfill its undertakings in that agreement); *Benchmark Mechanical, Inc*., 348 NLRB 576 (2006).

In its joinder to the General Counsel's Motion for Default Judgment, the Union requests that the Board order the Respondent to post the appropriate Board notice for the time period between the filing of the unfair labor practice charges and the date the notices are actually posted; to post the Board's Employee Rights Notice Posting for 5 years; to buy 10 copies of the book "California Workers' Rights" and distribute them to employees; and to allow the Union to visit job sites for 30 minutes per week for 1 year. We deny these requests because the Union has not shown that these additional measures are needed to remedy the effects of the Respondent's unfair labor practices. See generally *Alstyle Apparel*, 351 NLRB 1287, 1288 (2007). Finally, the Union requests that the remedial notice state that the Respondent has been found to have violated the National Labor Relations Act. With respect to this request, we note that the attached notice, which conforms to the Board's standard remedial language, states that the Respondent "violated Federal labor law."

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted and Mailed by Order of the National Labor Relations Board" shall read "Posted and Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

reads the notice to employees in English, the Board agent will then read the notice in Spanish.

Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 13, 2017

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED AND MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees about their union activities or support.

WE WILL NOT, unless required by a general contractor, require employees to wear vests at projects so as to cover up union insignia they are wearing, or inform employees that they have to wear vests to cover union insignia.

WE WILL NOT assign employees more onerous work duties (such as bending z-bars or punking rebar) because of their union activities or support

WE WILL NOT threaten to isolate, discipline, or terminate employees because of their union activities or support.

WE WILL NOT direct employees to report the union activities or sympathies of other employees to us.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

PRO WORKS CONTRACTING, INC.

The Board's decision can be found at www.nlrb.gov/case/21-CA-161599 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.